

P-407, 421/CP-86-526; P-407, 421/CP-87-219 ORDER REQUIRING
REVISED LOWER COST ALTERNATIVE PROPOSAL, COST STUDIES AND
PROPOSED RATES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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Commissioner

In the Matter of the Petition of
Certain Subscribers in the
Lindstrom Exchange for Extended
Area Service to the
Minneapolis/St. Paul
Metropolitan Calling Area

ISSUE DATE: April 10, 1992

DOCKET NO. P-407, 421/CP-86-526

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PROCEDURAL HISTORY

I. Proceedings To Date

On July 31, 1991, the Commission issued an order in both of these dockets. In each Order, the Commission required the involved telephone companies to refile their cost studies and proposed rates within 45 days of the Order. The Commission also directed the company serving the petitioning exchanges in these dockets (GTE), to file its proposed lower cost alternative to the EAS flat rate at the same time it filed its revised cost studies and proposed rates.

On September 5 and 6, 1991, respectively, Eckles Telephone Company and U S West Communications, Inc. (USWC) requested additional time to complete their cost studies and proposed rates citing the difficulty of developing a uniform traffic study methodology. The Commission granted the requested extension on September 23, 1991.

Between October 15 and 17, 1991, the companies filed their cost studies and proposed rates.

On December 2, 1991, the Department requested additional time to file its report and recommendation due to USWC's recent filing of revised cost studies. In addition to commenting on the companies' cost studies and proposed rates, the Department noted

that it would be analyzing GTE's proposed lower cost alternative. The Commission granted the Department's request on January 15, 1992.

On February 20, 1992, the Department filed its reports and recommendations for these two dockets.

On March 9 and 11, 1992, respectively, USWC and GTE submitted replies to the Departments reports and recommendations.

On March 12, 1992, the City Council for the City of Delano filed a Resolution supporting the Department's report and recommendation regarding the Delano petition.

On March 31, 1992, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. Commission Action

The companies' filings raise five issues that require Commission consideration. Those issues are addressed as follows:

GTE's Proposed Lower Cost Alternative

Minn. Stat. § 237.161, subd. 1 (c) (1990) states that when a petition for extended area service to the metropolitan calling area (MCA) is granted, the company serving the petitioning exchange must

...make local measured service or another lower cost alternative to the basic flat-rate service available to customers in the petitioning exchange.

For its lower cost alternative, GTE proposed to discount the EAS flat-rate charge by 50 percent for those customers who are receiving assistance through the Telephone Assistance Plan (TAP).

In response to the Department's criticism that its alternative would not be available to all customers in the petitioning exchanges, GTE argued that the statute does not indicate that the lower cost alternative must be made available to all customers. GTE stated that in the absence of mandated availability to all customers, alternatives that limit provision to specific groups may be permitted. GTE argued that its proposal is reasonable because it targets relief to an identifiable group of customers whose need has been objectively demonstrated. A further benefit of the proposal, according to GTE, is that it saves GTE from having to do the extensive technical study necessary before implementing local measured service. GTE also noted that by

applying a discount to a group of fixed size rather than offering an alternative to EAS rates to all customers, the number of subscribers that would be paying EAS rates would be more predictable. This predictability, in turn, would provide a more stable basis for setting EAS rates.

The Commission finds that GTE's arguments for the reasonableness of its proposal need not be individually addressed because the question is controlled by the statutory language.¹ Contrary to GTE's assertion, the statute is not ambiguous on this point. The statute clearly requires that an alternative service be made available to all customers in the petitioning exchange. Nothing in the statute suggests that it is appropriate to interpret the phrase "customers in the petitioning exchange" as meaning *some* customers in that exchange. Interpreting the phrase in that way would, in effect, amend the statute in the guise of interpreting it. This is not permitted.

The statute expresses the legislature's intent that all subscribers in petitioning exchanges have an alternative telephone service that they may choose in place of EAS. GTE's proposal would deny an alternative to the vast majority of its subscribers, i.e. those not eligible for TAP assistance. As such it contravenes the statute and will be rejected. GTE will be required to prepare a new proposal that meets the statutory criteria.

Gross Receipts Tax

In compliance with the Commission's September 23, 1991 Order, GTE filed cost studies that included a one percent gross receipts tax. However, the gross receipts tax dropped to zero percent on January 1, 1992. The Department recommended and GTE has agreed to refile its revenue requirement study with a zero percent gross receipts tax.

The Commission will require the refiling as recommended by the Department and agreed to by GTE. There is no basis for allowing telephone companies to recover any amount of gross receipts tax in their EAS rates.

Cost of Money

The cost studies filed by all the companies in this matter provide information on all the factors that, taken together,

¹ The Commission will comment, however, upon GTE's argument that making the alternative to EAS available to all subscribers would make setting EAS rates imprecise. Mathematical precision is neither necessary nor required. In fact, several other factors already make setting EAS rates an imprecise exercise (e.g. the stimulation factor).

produce the EAS revenue requirement. The Commission, then, adopts EAS rates designed to recover that revenue requirement. Among the factors used in computing revenue requirement is the cost of money. A company's cost of money, in turn, is derived from its return on equity, the cost of debt, and capital structure.

The Department asserts that the cost studies filed by USWC are unsatisfactory because they are based upon a return on equity and a cost of debt supported by material dated between December 31, 1989 and March 1, 1990, a period prior to the current recession. As a result, according to the Department, these figures are too high. The Department recommended that USWC be required to refile these studies using the Department's lower return on equity and cost of debt estimates.

USWC responded that it has recently revised the cost of money to be used in its EAS cost studies. Specifically, USWC now uses a 13.4 percent return on equity and a 8.5 percent cost of debt for a composite cost of money of 11.5 percent. USWC objected to the Department's proposed figures for return on equity and cost of debt, but offered to recalculate the cost studies filed in these dockets using its own revised figures within 30 days.

EAS rates must be based, in part, on the actual cost of money for the period during which the EAS is installed. Minn. Stat. § 237.161, subd. 2 (1990). USWC's currently filed cost studies will be rejected because they are based on outdated cost of money factors. The Commission will require the company to refile its cost studies within 30 days of this Order.

A disagreement may exist between USWC and the Department regarding the cost of money factor that the Commission should ultimately use in calculating USWC's revenue requirement. USWC's revised cost of money factor is slightly higher than the Department's. That issue need not be resolved at this time. The Commission will allow USWC to use its newly revised return on equity and cost of debt in preparing those studies. In its report and recommendation, the Department will comment upon these studies, including the appropriateness of the cost of money factor, before the Commission establishes USWC's revenue requirement and adopts EAS rates to recover that amount.

If the Department disputes USWC's cost of money figures, it should include with its comments rates based on cost of money figures it deems more appropriate.

GTE's Proposed EAS Rates for its Existing MCA Exchanges

GTE proposed to charge subscribers in its five existing MCA exchanges a uniform flat rate additive if Delano and Lindstrom are added to the MCA.

The Department objected that this would be unfair to the GTE MCA exchanges that already have EAS to Delano (Maple Plain, Mound, and St. Bonifacius) as well as to Wyoming, an MCA exchange that already has EAS to Lindstrom. The Department noted that imposing an additive to such exchanges upon entry of Lindstrom and Delano to the MCA would increase the rates of subscribers in those exchanges without providing them any additional service.

The Department also argued that Commission precedent in the Watertown, Mayer, and New Germany EAS dockets supported exempting MCA exchanges that already have EAS to the petitioning exchanges from incurring an additional additive if the petitioning exchanges secured EAS to the entire MCA.

1. Previous Decisions by the Commission

The Department misunderstands the Commission's action regarding Watertown, New Germany and Mayer. In its January 25, 1991 Order regarding Watertown and New Germany² and in its February 1, 1991 Order regarding Mayer³, the Commission did not adopt the principle that MCA exchanges with EAS to the petitioning exchange should not be assessed an additive upon the petitioner's entry into the MCA. The Commission did not exempt these exchanges from paying additives in response to GTE's attempt to impose an additive on all its MCA exchanges. Instead, the Commission evaluated GTE's proposal to absorb all the EAS costs that were apportionable under the statute (25 percent) to its MCA exchanges. The Commission simply found that GTE's proposal (i.e. to impose an additive against none of its MCA exchanges) was permitted under the statute and was fair and equitable.

In so finding, the Commission was not establishing a precedent that GTE could not apportion an additive to exchanges that already had EAS to the petitioning exchange any more than it was establishing a precedent that GTE would always be required to absorb such costs and never pass them on to its MCA exchanges.

Simply stated, apportionment of EAS costs to MCA exchanges is governed not by the Commission's action in the Mayer, Watertown, and New Germany dockets, but by statutory requirements. The statute authorizes apportionment of 25 percent of the EAS costs

² Watertown and New Germany, ORDER ADOPTING GUIDELINES FOR EXTENDED AREA SERVICE RATES FOR THE BELLE PLAINE, NEW PRAGUE, WATERTOWN AND NEW GERMANY EXCHANGES AND VARYING TIME FOR FILING FOR RECONSIDERATION, Docket Nos. P-421, 407, CP-87-536 and P-407, 421, 430, 405, 426/CP-90-440 (January 25, 1991).

³ Mayer, ORDER ADOPTING GUIDELINES FOR EXTENDED AREA SERVICE RATES FOR THE WACONIA, MAYER, COLOGNE, AND NORWOOD EXCHANGES AND VARYING TIME FOR FILING FOR RECONSIDERATION, Docket Nos. P-421, 407, CP-87-536 and P-407, 421, 430, 405, 426/CP-88-839 (February 1, 1991).

"...to the exchange or exchanges to which extended area service is requested." Minn. Stat. § 237.161, subd 3 (a) (1990). GTE's proposal appears consistent with the statute. There is no question that Delano and Lindstrom have petitioned for EAS to the MCA which includes the exchanges that the Department would exempt. By contrast, since the statute provides no basis for differentiating between the MCA exchanges in the apportionment of EAS costs, the Department's proposal to exempt some exchanges from paying a portion of those costs while imposing them on others is contrary to the statute.

2. Fair and Equitable EAS Rates

When the interests of all parties are considered together, as required by Minn. Stat. § 237.161, subd. 3 (c) (1990), applying a flat rate additive to GTE's MCA exchanges that already have EAS to the petitioning exchanges is not unfair. The statute does not focus, as the Department's current recommendation suggests, upon the narrow question of what does each individual customer immediately gains from installing EAS. Although Wyoming subscribers do not gain greater access to Lindstrom when that exchange joins the MCA, the MCA as a whole is increased in value, the common good promoted due to the inclusion of Lindstrom, and it is fair that Lindstrom's neighbors in the Wyoming exchange bear a portion of that cost, thereby easing the burden borne by subscribers in GTE's other MCA exchanges.

The Department's proposal to exempt some exchanges would either raise the additive applied to the remaining non-exempted exchanges or pressure GTE to, once again, waive its statutory right to recover 25 percent of the EAS costs from these exchanges. The former result would be unfair to the non-exempt exchanges and the latter result would be unfair to GTE.

In light of this analysis, the Commission will approve GTE's proposal as consistent with the EAS statute and fair and reasonable.

Interexchange Toll Contribution

In dockets involving the Hokah, Northfield and Cannon Falls EAS petitions, the Commission issued an ORDER DETERMINING THE STATUS OF INTEREXCHANGE CARRIERS UNDER MINN. STAT. § 237.161, SUBD. 3 (B) (1990), Docket Nos. P-401/CP-89-951, P-42/CP-87-352, and P-407, 421/CP-87-216 (November 21, 1991). This Order is referred to herein as the Hokah Order.

In its report and recommendation regarding the current Lindstrom and Delano dockets, the Department restated its disagreement with the Commission's definition of "affected telephone company" in the Hokah Order, but stated that consistent with that Order USWC should not include toll contribution from ILEC to ILEC routes within the MCA in its estimate of toll contribution. The Department stated that in light of the Hokah Order it would have

to recommend that the Commission order USWC to refile its EAS revenue requirement studies in these (Lindstrom and Delano) dockets excluding the toll contribution from the ILEC to ILEC routes. USWC agreed with this analysis and no party in this docket disagreed.

In a companion case, however, Bridge Water Telephone Company has questioned the applicability of the Commission's analysis and decision in the November 21, 1991 to the Monticello EAS petition. Bridge Water raises a question relevant to the instant dockets: whether the Commission's analysis in its November 21, 1991 Order applies or is applicable to proposed intraLATA metro EAS routes. The Commission has provided for a comment period regarding Bridge Water's filing before deciding the matter. In the Matter of a Petition for Extended Area Service Between the Monticello Exchange and the Minneapolis/St. Paul Metropolitan Calling Area, P-404, 421/CP-89-1039, ORDER (April 10, 1992).

The Commission will neither prejudge that issue nor will it stay proceedings in the current dockets pending a decision in the Monticello docket. Instead, the Commission will proceed with this matter by requiring USWC to refile cost studies and proposed rates that both include its toll contribution for ILEC-ILEC routes and exclude its toll contribution for such routes.

ORDER

1. Within 60 days of this Order, GTE Minnesota, Inc. (GTE) shall meet with the Minnesota Department of Public Service (the Department) to discuss progress on its lower cost alternative proposal.
2. Within 90 days of this Order, GTE shall file its lower cost alternative proposal and serve a copy on the parties.
3. Within 90 days of this Order, GTE shall file revised cost studies using a zero percent gross receipts tax.
4. Within 90 days of this Order, U S West Communications, Inc. (USWC) shall file revised cost studies using its revised cost of money and present its EAS revenue requirement including and excluding its toll contribution for ILEC to ILEC routes.
5. Within 90 days of this Order, GTE, USWC, Eckles Telephone Company, Scott-Rice Telephone Company, United Telephone Company, and Vista Telephone Company shall file two sets of proposed rates: one set that recovers a total revenue requirement that includes USWC's toll contribution for ILEC to ILEC routes and another set recovering a revenue requirement omitting that contribution.

6. Proposed rates for existing MCA subscribers shall meet the requirements of Minn. Stat. § 237.161 (1990) and shall use the companies' past practices for establishing EAS additives.
7. Parties may comment in writing regarding any company filing during a 30 day period following its filing.
8. Every filing shall be served upon the Department and the other parties on the same day that it is filed with the Commission.
9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)